

December 14, 2007

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E05G0258**

KEVIN BERGIN CONSTRUCTION

Code Enforcement Appeal

Location: 18109 Vashon Highway Southwest

Appellants: Kevin Bergin
represented by **Michael Bradley**
Sound Consulting
26425 Wax Orchard Road
Vashon, Washington 98070

Choe Ki Hun, Owner
2308 Payton
Irvine, California 92620

King County: Department of Development and Environmental Services (DDes)
represented by **Sheryl Lux**
900 Oakesdale Avenue Southwest
Renton, Washington 98055-1219
Telephone: (206) 205-1525
Facsimile: (206) 296-7051

SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:	Deny the appeal
Department's Final Recommendation:	Deny the appeal (in part); grant the appeal (in part) and extend time for compliance
Examiner's Decision:	Deny the appeal (in part); grant the appeal (in part) and extend time for compliance

ISSUES/TOPICS ADDRESSED:

- Grading without a permit,
- change of use without a permit, and
- operation of materials processing in violation of zone classification.

SUMMARY OF DECISION:

The property owner's appeal of a notice of code violation for grading without a permit and for change of use (building occupancy) without a permit is denied; the appeal of the notice of King County code violation with respect to operation of a materials processing business in violation of the zoning overlay (Vashon Community Plan) is granted; and additional time is provided for compliance with permitting requirements.

EXAMINER PROCEEDINGS:

Hearing opened:

December 11, 2007

Hearing closed:

December 11, 2007

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. On September 19, 2007, the King County Department of Development and Environmental Services issued a Notice of King County Code Violation, Civil Penalty Order, Abatement Order, Notice of Lien, Duty to Notify ("Notice and Order") to Hun Choe Ki and Bergin Kevin Construction. The property subject to the Notice and Order is located at 15229—115th Avenue Southwest (Vashon Island) in unincorporated King County. Choe Ki Hun is the owner of the subject property; Kevin Bergin is the lessee, with an option to purchase.
2. The Notice and Order alleged violation of the King County code for grading within a critical aquifer recharge area without required permits; repairing a residential building and converting it to commercial office space without required permits; and operating a materials recycling center in a zone not allowing that use.
3. A timely appeal of the Notice and Order was filed by Kevin Bergin, on behalf of Kevin Bergin Construction and Choe Ki Hun, on September 28, 2007. The Statement of Appeal asserts that a materials recycling center is a permitted use in the zone, not specifically prohibited by the Vashon Community Plan, and requests that the existing retail and recycling business be allowed to continue.

4. The preponderance of the evidence is that the appellant receives and stores temporarily some landscaping and site development debris on the subject property, and that he stores and sells landscaping materials, but that there is no processing of materials on the site. Based upon that evidence, DDES has requested that the portion of the Notice and Order that alleges the operation of a materials recycling center be withdrawn.
5. The preponderance of the evidence is that the appellant has converted the former residential building on the site to use as an unheated storage building, used solely for storage of equipment and supplies associated with the appellant's business. The appellant replaced the roof on the building and made other repairs necessary for its safe use as a dry storage area protected from the elements. The building currently has no heat, power, or plumbing. It is not being used as an office. The appellant is in the process of obtaining permits necessary for its use as a storage building.
6. The preponderance of the evidence indicates that grading has occurred on the site covering an area that exceeds the maximum grading allowed without a King County grading permit. The appellant is also in the process of submitting an application for a grading permit for the site.
7. DDES recommends that the appellant continue with the permit process, commencing with an intake meeting (currently scheduled for January 4, 2008) to obtain permits necessary for the grading that occurred, and for the change of use of the residential building on the property to storage.

CONCLUSIONS:

1. The appeal of the subject Notice and Order with respect to the operation of a materials recycling center on the subject property should be granted.
2. The appeal of the subject Notice and Order with respect to the conversion of a residence on the site to commercial office space should be granted, subject to the requirement that the conversion of the residence to a storage building be authorized by a King County building, occupancy, change of use or similar permit.
3. The appeal of the subject Notice and Order with respect to grading within a critical aquifer recharge area without necessary permits is denied.
4. The appellants should be afforded a reasonable period of time to continue with the King County permitting process to obtain review and approval of grading, commercial use, occupancy, building, change of use and/or other permits as determined to be necessary by DDES to authorize the grading and change of use of the residential building on the site to a storage building.

DECISION:

The Notice of King County Code Violation, Civil Penalty Order, Abatement Order, Notice of Lien, Duty to Notify issued on September 19, 2007 is AFFIRMED, in part, and the appeal of the Notice and Order is GRANTED, in part, as follows:

1. The appeal of the alleged violation of operating a materials recycling center is GRANTED.

2. The appeal of the alleged violation of repairing a residence and converting it to commercial office space is GRANTED, subject to the appellant obtaining the permits necessary for the conversion of the former residence to a storage building.
3. The appeal of the alleged violation of grading within a critical aquifer recharge area without required permits is DENIED, and the Notice and Order with respect to that violation is AFFIRMED, subject to the extension of time for correcting that violation as recommended by DDES. The appellant shall proceed with the scheduled intake meeting for submission of necessary permit applications on or about January 4, 2008, and shall proceed with the submission of all materials required for the review of that application and the timely performance of any conditions of approval established through the permit review process.

ORDERED this 14th day of December, 2007.

James N. O'Connor
King County Hearing Examiner *pro tem*

TRANSMITTED via certified mail this 14th day of December, 2007, to the following parties:

Michael Bradley
Sound Consulting
26425 Wax Orchard Rd.
Vashon WA 98070

Kevin Bergin Construction
12311 SW Bachelor Rd
Vashon WA 98070

Kevin Bergin Construction
15229 115th Ave. SW
Vashon WA 98070

Choe Ki Hun
2308 Payton
Irvine CA 92620

TRANSMITTED this 14th day of December, 2007, to the following parties and interested persons of record:

Michael Bradley
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26425 Wax Orchard Rd.
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12311 SW Bachelor Rd
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2308 Payton
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Deidre Andrus
DDES/LUSD
MS OAK-DE-0100

Jo Horvath
DDES/BSD
MS OAK-DE-0100

Sheryl Lux
DDES/LUSD
MS OAK-DE-0100

Lamar Reed
DDES/LUSD
MS-OAK-DE-0100

Toya Williams
DDES/LUSD
MS OAK-DE-0100

NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES

MINUTES OF THE DECEMBER 11, 2007, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E05G0258.

James N. O'Connor was the Hearing Examiner in this matter. Participating in the hearing were Sheryl Lux, representing the Department; Michael Bradley, representing the Appellant, and Kevin Bergin.

The following Exhibits were offered and entered into the record:

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| Exhibit No. 1 | DDES staff report to the Hearing Examiner for December 11, 2007 |
| Exhibit No. 2 | Copy of the Notice & Order issued September 19, 2007 |
| Exhibit No. 3 | Copy of the Notice and Statement of Appeal received September 26, 2007 |
| Exhibit No. 4 | Copies of codes cited in the Notice & Order |
| Exhibit No. 5 | Copy of current Assessor's records including photographs |
| Exhibit No. 6 | Copy of 2002 aerial from GIS |
| Exhibit No. 7 | Copy of 2005 aerial from LocalLive.com |
| Exhibit No. 8 | Copy of photographs taken by Officer Sheryl Lux |